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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/764,819	01/26/2004	William C. Vogel	028757-0143	6890
26371	7590	07/21/2006	EXAMINER	
FOLEY & LARDNER LLP 777 EAST WISCONSIN AVENUE MILWAUKEE, WI 53202-5306			NICOLAS, FREDERICK C	
			ART UNIT	PAPER NUMBER
			3754	

DATE MAILED: 07/21/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/764,819

Applicant(s)

VOGEL ET AL.

Examiner

Frederick C. Nicolas

Art Unit

3754

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 26 January 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 16-22 is/are allowed.
- 6) ☒ Claim(s) 1-4,6 and 8-15 is/are rejected.
- 7) ☒ Claim(s) 5 and 7 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 5/10/2004.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 6 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

I- Claim 6 recites the limitation "the flaps" in line 1. There is insufficient antecedent basis for this limitation in the claim.

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claim 1-4,6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Applicant's admission to the Prior Art (APA) in view of Towns 3,604,585.

APA discloses the prior art in claim 1, lines 1-7, except that a second projection extending from an inside wall of the base. Towns teaches the use of a second projection (19) extending from an inside wall (18) of a base (17) toward a top portion (24) and configured to coact with a first projection (15) on a container (10), the base and the top portion are integrally formed as seen in Figure 3.

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It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide Towns' projection onto APA's inside wall of the base, in order to prevent removal of the base.

Further, it would have been obvious to one having ordinary skill in the art at the time the invention was made to utilize Towns' teaching onto the base of APA by integrally formed the base and the top portion as a single piece, in order to greatly reduce the cost of manufacturing the base and the top portion.

With respect to claim 2, the claimed subject matter "wherein the base has a rectangular shape".

It would have been obvious to one having ordinary skill in the art at the time the invention was made to change the shape of the base of APA and Towns to be rectangular, since it has been held that a change in the shape of the element involves only routine skill in the art. In re Dailey, 149 USPQ 47 (CCPA 1966).

5. Claims 3,6 are rejected under 35 U.S.C. 103(a) as being unpatentable over APA in view of Towns as applied to claim1 above, and further in view of Waterman 3,262,606.

APA-Towns in combination has taught all the features of the claimed invention except that the base and the top portion are integrally formed as a single piece. Waterman teaches the use of a base (4) having a rectangular shape as seen in Figure 1, the base having a top portion (3), where the base and the top portion are integrally formed as a one piece as seen in Figure 1, flaps (14,15).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to utilize Waterman's teaching onto the base of APA and Towns by integrally formed the base and the top portion as a single piece, in order to greatly reduce the cost of manufacturing the base and the top portion.

### ***Double Patenting***

6. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to

be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

7. Claims 8-9,11-12,14-15 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-2,29-31 of U.S. Patent No. 6,691,901. Although the conflicting claims are not identical, they are not patentably distinct from each other because claims 1-2,29-34 of Patent No. 6,691,901 encompass all the limitations of the above noted claims.

8. Claim 10 is rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. 6,691,901 in view of Waterman 3,262,606.

Parve et al. disclose in U.S. Patent No. 6,691,901, all the claimed limitation except that the container opening is rectangular. Waterman teaches the use of a cover base (1) attached to a rectangular container opening (col. 2, ll. 26-32).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the container opening of Parve et al. to be rectangular as taught by Waterman in (col. 2, ll. 26-32), in order to provide a container opening of any shape.

9. Claim 13 is rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. 6,691,901 in view of Towns 3,604,585.

Parve et al. disclose in U.S. Patent No. 6,691,901, all the claimed limitation except that a snap ridge projecting from an inside wall of the base and configured to engage a corresponding projection extending from the container. Towns teaches the use of a snap ridge (19) extending from an inside wall (18) of a base (17) toward a top portion (24) and configured to coact with a first projection (15) on a container (10), the base and the top portion are integrally formed as seen in Figure 3.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide Towns' projection onto the inside wall of the base of Parve et al., in order to prevent removal of the base.

#### ***Allowable Subject Matter***

10. Claims 16-22 are allowed.

11. Claims 5,7 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### ***Conclusion***

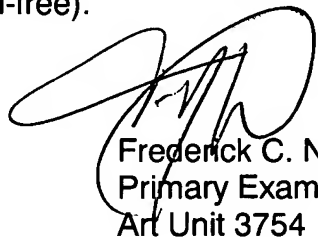
12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Foster 3,469,732, Dogliotti 3,872,996 and Hidding 3,542,235 disclose other types of closure for a container.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Frederick C. Nicolas whose telephone number is (571)-272-4931. The examiner can normally be reached on Monday - Friday from 9:00 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin P. Shaver, can be reached on 571-272-4720. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

FN  
July 12, 2006

 7/12/06  
Frederick C. Nicolas  
Primary Examiner  
Art Unit 3754